Creating Parenting Plans

October 2008
North Carolina Law
**GS 50–13.2**

- Custody must be awarded to “such person as will best promote the interest and welfare of the child.”

- Court may grant:
  - Joint custody to the parents
  - Exclusive custody to one person
  - Custody to two or more persons
Order shall include such terms, including visitation as will best promote the interest and welfare of the child.

Visitation is a “lesser form of custody”
- *Clark v. Clark*, 294 NC 554 (1978)

Order should establish the time, place and conditions for exercising visitation.
Parents

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Between mother and father, no presumption shall apply as to who will better promote the interest and welfare of the child
  ◦ GS 50–13.2

Parent cannot be denied reasonable visitation unless court finds parent unfit or that visitation is not in best interest of the child
  ◦ GS 50–13.5(i)
  ◦ Supervised visitation is not “reasonable visitation”

Cannot allow custodial parent to control visitation
Definitions

- **Physical Custody**
  - No definition in statutes or cases

- **Legal Custody**
  - Right and responsibility to make decisions with important and long-term implications for a child’s best interest and welfare
  - Includes “education, health care, religious training and the like.”
  - No presumptions regarding legal custody
  - Order should be specific
“Joint” Custody

- Must be considered “upon request of either party”
  - GS 50–13.2
- There is no presumption in favor of joint custody
- Implies a sharing of responsibility.
- Because there is no definition, “judge has substantial latitude in fashioning a joint custody arrangement.”
Joint Legal Custody

- If award joint legal, cannot “split” decision-making authority without specific findings regarding need to split
  - *MacLagan v. Klein*, 123 NC App 577 (split upheld based on conflicts over religion and evidence of impact on child)
“A fairly common visitation schedule for unrestricted visitation with school age children is every other weekend, one weekday evening per week, four weeks in the summer, and alternate holidays.”

- Lee’s Family Law, 5th edition, pp. 13–95
Trends Outside of North Carolina
ALI Principles of Family Dissolution (Restatement)

- Each parent must submit “Proposed Parenting Plan”

- Goal of court should be to reasonably approximate pre-separation caretaking responsibility as much as possible

- Allocate decision-making authority based on listed factors
Joint Custody

- 47 states have joint custody statutes
- 11 states have joint custody presumption
- 16 states have presumption in favor of joint if both parents agree
- 2 states allow joint only if parents consent
  - Modern Child Custody Practice, pp. 6–2
Joint Custody

- Definition: custody shared in such a way as to assure child of frequent and continuing contact with both parents

- Equal division of time is not required

- Courts mixed on true “alternating custody”
  - Modern Child Custody Practice, pp. 6–10
Several states have adopted visitation guidelines

- Texas: statute requires use of guidelines if child is 3 years or older, unless against best interest
- Indiana: very detailed guidelines by state judicial conference
- Utah: advisory visitation guidelines by supreme court rule
- Massachusetts: Parenting Plan guidelines provided to parents by AOC